JUL 8 1974

IN THE

Supreme Court of the United States

October Term, 1973
No. 73-1842

GEORGE T. ADAMS,

Petitioner,

vs.

SOUTHERN CALIFORNIA FIRST NATIONAL BANK,

Respondent.

WILLIE O. HAMPTON and MATTIE HAMPTON, individually, and on behalf of all others similarly situated,

Petitioners,

vs.

THE BANK OF CALIFORNIA, National Association, a California banking corporation,

Respondent.

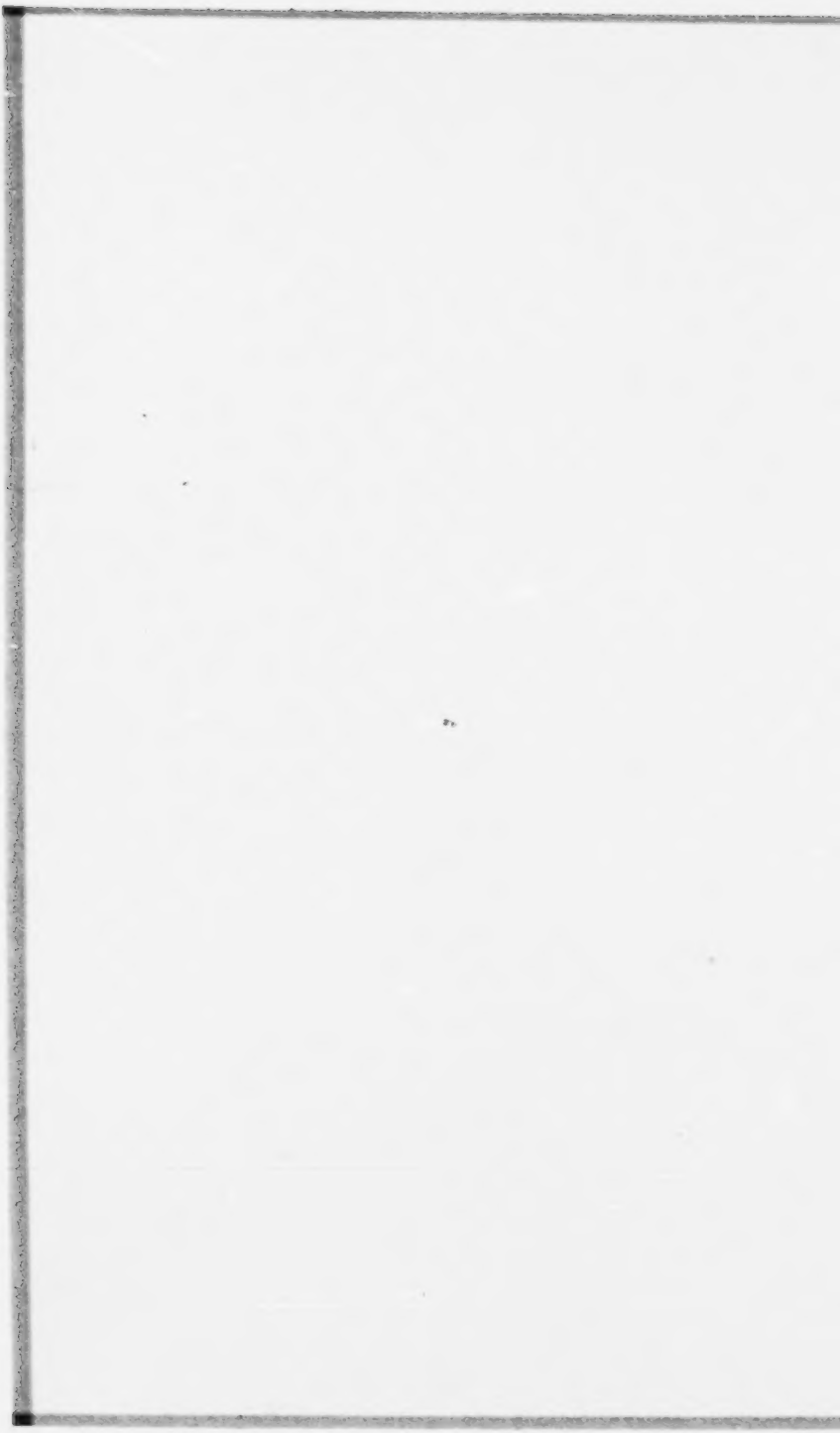
Motion for Permission to File Brief Amici Curiae in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief Amici Curiae.

GEORGE R. RICHTER, JR.,
458 South Spring Street,
Suite 600,
Los Angeles, Calif. 90013,

Counsel for Amici Curiae Ford Motor Credit Company, General Motors Acceptance Corporation and Chrysler Credit Corporation.

Of Counsel:
SHEPPARD, MULLIN, RICHTER & HAMPTON,
458 South Spring Street, Suite 600,
Los Angeles, Calif. 90013,
(213) 620-1780.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-5622



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Motion for Permission to File Brief Amici Curiae in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 42(3) of the Rules of the Supreme Court of the United States, Ford Motor Credit Company, General Motors Acceptance Corporation and Chrysler Credit Corporation (herein collectively referred to as "Amici") move this Court for permission to file a Brief Amici Curiae in this case in support of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit filed by

Petitioners. In support of this motion, Amici respectfully allege as follows:

1. Ford Motor Credit Company is a subsidiary of Ford Motor Company and provides wholesale financing to qualified Ford Motor Company franchised dealers, purchases retail installment sales paper from them and engages in all forms of commercial and industrial financing.

2. General Motors Acceptance Corporation is a subsidiary of General Motors Corporation and is engaged in the business of financing the distribution of new products manufactured by General Motors Corporation to General Motors franchised dealers for resale and of purchasing such dealers' retail installment sales contracts covering new as well as used products sold by such dealers.

3. Chrysler Credit Corporation is a subsidiary of Chrysler Financial Corporation which is a wholly owned subsidiary of Chrysler Corporation. Chrysler Credit Corporation is engaged in the business of wholesale financing of Chrysler dealers and of purchasing retail installment sales contracts covering new cars and used cars of any manufacture sold by such dealers.

4. In connection with their business, Amici retain security interests in all forms of personal property including automobiles, trucks, farm equipment and other products. Their dealer financing plans provide a valuable service without which dealers would find it difficult or impossible to stock products for sale at retail.

5. At the end of the year 1973, Amici had a combined total of approximately $19,040,000,000 in retail and wholesale credit outstanding in the United States,

substantially all of it secured by some form of personal property. Of that total, approximately $12,623,000,000 consisted of retail credit primarily associated with the financing of new and used automobile purchases.

6. Amici would be substantially and adversely affected in connection with the above financing by any decision denying their contractual right to exercise private and peaceful self-help repossession where their debtors are in default.

7. The complaints filed with the District Courts in these cases challenge the constitutionality of the private and peaceful self-help repossession of Petitioners' automobiles as authorized by the security agreements they signed. The complaints are representative of scores of other complaints filed in federal and state courts throughout the United States challenging the constitutionality of self-help repossession. A list of cases known to Amici involving the constitutionality of self-help repossession is attached to the Brief as Appendix A. Amici are involved as party defendants in many of these cases.

8. Amici are familiar with the factual and legal issues raised in the *Adams* and *Hampton* cases having filed an Amici Curiae Brief in support of the Bank in *Adams v. Southern California First National Bank* and having participated in the oral argument of these cases before the United States Court of Appeals for the Ninth Circuit.

9. Amici have read the Petition for a Writ of Certiorari filed here and believe that additional argument in support of the Petition is needed concerning the national importance of the unresolved federal questions raised in these cases, the need for clarification of decisions of this Court concerning the issues raised herein,

and the potentially dispositive impact that a ruling by this Court would have upon the future course of other cases pending throughout the United States involving the constitutionality of various forms of self-help creditor remedies.

10. Amici, who are taking the unusual position of supporting review by this Court of a decision of the Court of Appeals in which they wholly concur, have been unable to secure the permission required by Rule 42(1) of the Rules of the Supreme Court of the United States.

11. Amici therefore respectfully request that this Court grant them permission to file an Amici Curiae Brief in support of the Petition for a Writ of Certiorari. The Brief, which is submitted with this Motion and has been served upon Petitioners and Respondents, is limited in scope to setting forth the reasons why a writ of certiorari should be granted. Amici will move this Court for permission to file a full brief on the merits of the "state action" and Due Process issues raised herein should the Petition for a Writ of Certiorari be granted and such a motion be necessary.

Dated: July 5, 1974.

Respectfully submitted,

GEORGE R. RICHTER, JR.,

Counsel for Amici Curiae Ford Motor Credit Company, General Motors Acceptance Corporation and Chrysler Credit Corporation.

Of Counsel:
SHEPPARD, MULLIN, RICHTER & HAMPTON.

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Brief Amici Curiae in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

I.

Introductory Statement.

A. Statement of Position and Interest of Amici Curiae.

This Amici Curiae Brief is filed by Ford Motor Credit Company, General Motors Acceptance Corporation and Chrysler Credit Corporation (herein collectively referred to as "Amici") pursuant to Rule 42(1) of the Rules of the Supreme Court of the United States. Amici filed a Brief in support of Respondent in *Adams v. Southern California National Bank* and participated in the oral argument of that case and its consolidated

companion, *Hampton v. Bank of California*, in the Court of Appeals. (These cases are hereinafter collectively referred to as "*Adams*".)

Amici fully endorse the decision and opinion of the Court of Appeals in *Adams* but are taking the unusual position here of supporting the Petition for a Writ of Certiorari to review the Ninth Circuit's decision because of the importance of having this Court rule on the state action issues raised by this case. The importance of the case is reflected by the fact that this Court has cited *Adams* in two of its recent decisions involving debtor attacks on creditor remedies. *Fuentes v. Shevin*, 407 U.S. 67, 72 n.5 (1972); *Mitchell v. W. T. Grant Co.*, ... U.S. ...., 42 U.S.L.W. 4671, 4677 (U.S. May 13, 1974).

Amici are engaged in the business of wholesale financing of motor vehicle dealers and of purchasing retail installment contracts covering new and used cars sold by the dealers. In connection with this business, Amici retain security interests in all forms of personal property, including automobiles, trucks, farm equipment and other products. Amici would be substantially and adversely affected in connection with their business activities by any decision denying their contractual right to exercise private and peaceful self-help repossession in the enforcement of the foregoing security interests in personal property.

Amici are presently parties to numerous lawsuits in federal and state courts across the country in which their private and peaceful repossession of collateral, after default by their debtors, has been challenged under the Due Process Clause of the Fourteenth Amendment. Amici are adversely affected both by the

proliferation of such litigation and the uncertainty created thereby.

B. Statement of the Case.

Adams began with complaints filed in United States District Courts challenging the constitutionality under the Due Process Clause of the repossession of Petitioners' motor vehicles by Respondents. The repossessions, which were expressly authorized by the security agreements signed by Petitioners, were accomplished privately, peacefully and without any form of assistance, cooperation or participation by any officer or agent of the State. In *Adams v. Southern California First National Bank*, the District Court for the Southern District of California nevertheless held that the Bank's self-help repossession of Petitioner's automobiles is "state action" violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In *Hampton v. Bank of California*, the District Court for the Northern District of California reached the opposite conclusion.

Both cases were appealed and consolidated by the Court of Appeals for purposes of oral argument and decision. On October 4, 1973, the Court of Appeals filed its Opinion concluding that the exercise of the right of self-help repossession does not constitute "state action":

> [T]he State of California is not so significantly involved in the self-help repossession procedures undertaken by the creditors in these cases to permit this court to find the state action or conduct taken under color of state law required to establish a federal cause of action.
>
> 492 F.2d at 329.

The Court therefore reversed the decision of the District Court in *Adams* and affirmed the District Court's decision in *Hampton*.

On October 16, 1973, Petitioners filed in the Court of Appeals a petition for rehearing with a suggestion for rehearing en banc. On March 12, 1974, the petition for rehearing was denied by a majority of the panel and the request for en banc consideration was rejected by a majority of the members of the Ninth Circuit in active service with only one member of the Court expressing a dissenting view. The Petition for a Writ of Certiorari was then filed with this Court.

C. Related Petitions for Writs of Certiorari.

In an opinion filed on April 25, 1974, the United States Court of Appeals for the Eighth Circuit, finding no state action, dismissed constitutional attacks in two consolidated cases involving self-help repossessions that had taken place in Nebraska and Missouri. *Nowlin v. Professional Auto Sales, Inc.*, App. No. 73-1348 (8th Cir., April 25, 1974), and *Mayhugh v. Bill Allen Chevrolet*, App. No. 73-1450 (8th Cir., April 25, 1974), *summarized at* 4 CCH Sec. Tr. Guide ¶52,351. A different panel of the Eighth Circuit came to the same conclusion in a separate opinion filed on May 13, 1974 in *Nichols v. Tower Grove Bank*, App. No. 73-1621 (8th Cir., May 13, 1974), *summarized at* 4 CCH Sec. Tr. Guide ¶52,355. A Petition for a Writ of Certiorari to the Eighth Circuit is now pending before this Court to review the decision in the *Nowlin* case (No. 73-1897).

On February 14, 1974, the United States Court of Appeals for the Second Circuit filed its decision in *Shirley v. State National Bank*, 493 F.2d 739 (2d Cir.

1974), affirming a lower court dismissal of an action attacking the constitutionality of the self-help repossession remedy. The Court found no state action present in the self-help repossession of plaintiff's automobile, rejecting many of the same state action arguments that had been made by Petitioners in *Adams*. On March 29, 1974, the Court denied a petition for rehearing in *Shirley* and rejected a suggestion that the case be reheard en banc. Three members of the Court dissented from the order rejecting en banc consideration of the case. The plaintiff in *Shirley* has secured an extension of time to and including August 26, 1974, in which to file a Petition for a Writ of Certiorari to the Second Circuit.

Finally, on June 10, 1974, the United States Court of Appeals for the Fifth Circuit filed its opinion in *James v. Pinnix*, App. No. 73-1866 (5th Cir., June 10, 1974), holding that a private creditor's exercise of his right of self-help repossession does not constitute state action.

These cases present closely related if not identical state action issues and, should certiorari be sought and granted in any or all of them, they should be consolidated for purposes of oral argument and decision.

II.

The Decision of the Court of Appeals Is Correct, but the Petition for a Writ of Certiorari Should Nevertheless Be Granted for Purposes of Affirming That Decision and Thereby Settling an Important Question of Constitutional Law.

In June of 1969, this Court rendered its decision in *Sniadach v. Family Finance Corporation*, 395 U.S. 337 (1969), invalidating under the Due Process Clause

the Wisconsin wage garnishment statute. The *Sniadach* case was followed, and its holding was greatly expanded, three years later in *Fuentes v. Shevin*, 407 U.S. 67 (1972), in which this Court held the Florida and Pennsylvania replevin statutes unconstitutional. Those statutes authorized state agents in a statutory replevin action to seize property from a debtor upon the ex parte application of the creditor.

The *Sniadach* and *Fuentes* decisions resulted in a host of attacks throughout the country upon a wide variety of prejudgment creditor remedies involving the active intervention of state officials upon behalf of creditors. State action is clearly present in such cases because the taking of the debtor's property is accomplished by the State through its agents. The sole issue in these cases is therefore whether the particular creditor remedy under attack satisfies the requirements of the Due Process Clause. This Court's recent decision in *Mitchell v. W. T. Grant Co.*, ... U.S. ...., 42 U.S.L.W. 4671 (U.S. May 13, 1974), outlines a number of the factors to be weighed in making this determination.

The *Sniadach* and *Fuentes* cases, however, have had repercussions extending far beyond assaults upon prejudgment remedies executed through state processes. A number of creditor remedies have come under attack which, unlike the processes challenged in *Sniadach*, *Fuentes* and *Grant*, do not involve the state in the actual seizure or disposition of the debtor's property. Central to a determination of constitutional challenges to these private "self-help" creditor remedies will be an examination of the nature, extent, purpose and significance of the state's involvement, if any, with these remedies because the Due Process requirements of the

Fourteenth Amendment apply only as limitations on "state action", not private action. *Sniadach, Fuentes* and *Grant* did not deal with this issue because "state action" was clearly present in the challenged takings of property involved in those cases, although this Court's references to the *Adams* case in *Grant* and in the majority and dissenting opinions in *Fuentes* seem to recognize that self-help remedies are not subject to the strictures of the Fourteenth Amendment. *See Mitchell v. W. T. Grant Co.*, ... U.S. ...., 42 U.S.L.W. 4671, 4677 (U.S. May 13, 1974); *Fuentes v. Shevin*, 407 U.S. 67, 79 n. 12, 102 (1972).

Clearly, the most widespread Due Process attack upon creditor remedies is the assault upon self-help repossession. Scores of cases have been filed throughout the country challenging the constitutionality of this creditor remedy. Amici have listed in Appendix "A" the cases known to Amici where the exercise of this remedy has been challenged under the Fourteenth Amendment and where the constitutional issues of state action and Due Process have accordingly been presented for judicial resolution. Certiorari should be granted in this case so that this Court may finally pass on the constitutionality of self-help repossession, thereby preventing the needless expenditure of substantial federal and state judicial resources.

The judicial economies that will be realized by this Court's final resolution of the state action issues raised in *Adams* are illustrated by reference to another case presently before the Court. On February 25, 1974, this Court entered an order in *Gonzalez v. Mercantile National Bank* postponing further consideration of the question of jurisdiction to the hearing of the case on the merits. 42 U.S.L.W. 3484 (U.S. Feb. 25, 1974)

(No. 73-858). The amended class action complaint filed in the *Gonzalez* case challenges the constitutionality of the repossession provisions of the Illinois Uniform Commercial Code and the Illinois Vehicle Code, and raises substantive issues virtually identical to the issues involved in *Adams*. However, the three-judge District Court did not reach the merits of these claims, as did the Ninth Circuit in *Adams*, but instead dismissed the amended complaint on procedural grounds, holding that:

> (1) The plaintiffs lack standing to challenge the constitutionality of the Uniform Commercial Code and Vehicle Code sections involved because those sections allow repossession and transfer of title by the Secretary of State only upon default and the plaintiffs allege in their amended complaint that they were not in default at the time of the repossession;
>
> (2) The plaintiffs also lack standing to seek any declaratory and injunctive relief as to Counts 1 and 2 of the amended complaint because the challenged conduct—repossession and transfer of title—had already occurred so that granting declaratory and injunctive relief would be a useless act; and
>
> (3) Both the class and individual aspects of the action should be dismissed—as to the class since the plaintiffs lack standing themselves and can thus not represent the class and as to the named plaintiffs because they "fail to present a claim which can be reached on the merits." *Mojica v. Automatic Employees Credit Union*, 363 F. Supp. 143, 146 (N.D. Ill. 1973).

Gonzalez filed an appeal from the foregoing decision under 28 U.S.C. Section 1253. The Bank filed a motion to dismiss the appeal upon the ground that 28 U.S.C. Sections 1253 and 2281, read together, permit an appeal only from an order of a three-judge District Court granting or denying injunctive relief against a state officer on constitutional grounds and only from decisions on the merits. All parties agree that the order dismissing the amended complaint in *Gonzalez* was not based on constitutional grounds and was not a decision on the merits; and the Bank contends that the Illinois Secretary of State was merely a nominal defendant since his action in transferring title had nothing to do with the creditors' conduct in repossessing the motor vehicles.

If this Court ultimately accepts jurisdiction in the *Gonzalez* case, the order of the three-judge District Court presents only the foregoing procedural issues of standing and mootness. The basic underlying claim that self-help repossession is unconstitutional is not presented in *Gonzalez* in its present posture. However, should this Court grant certiorari in *Adams* and affirm the decision of the Court of Appeals, it will have resolved the underlying constitutional claim in *Gonzalez* and that case could then be dismissed for lack of a substantial federal question.

III.

The Petition for a Writ of Certiorari Should Be Granted to Clarify Previous Decisions of this Court Dealing with the "State Action" Requirement of the Fourteenth Amendment.

In attempting to establish the presence of "state action" in the private exercise by a creditor of his right to take possession of collateral upon the debtor's de-

fault, the Petitioners in *Adams*—and debtors generally in the vast number of cases raising the issue—have relied upon a wide variety of statements drawn from almost every state action decision rendered by this Court in the last three decades. Amici respectfully submit that this Court's previous decisions developing the "state action" doctrine, particularly when considered against the background of the history and purposes of the state action requirement, compel the conclusion that state action is not present in the exercise of self-help repossession. Certiorari should be granted for the purpose of clarifying the scope and thrust of these state action decisions.

Five basic theories of state action have been relied upon by debtors in attacking self-help repossession. *First*, debtors argue that state action is present in a creditor's exercise of his right of self-help repossession because the State has enacted Sections 9-503 and 9-504 of the Uniform Commercial Code, which provisions permit creditors to repossess and sell collateral upon the debtor's default under certain limited conditions. The debtors contend that these sections of the Code authorize and encourage self-help repossession and thereby significantly involve the State in the repossession under this Court's decision in *Reitman v. Mulkey*, 387 U.S. 369 (1967). Amici respectfully submit that the decision in *Reitman* does not support this broad theory of state action and that the Court should grant certiorari in *Adams* and so hold.

While the State has "acted" in enacting Sections 9-503 and 9-504 of the Uniform Commercial Code, just as the state "acted" in *Reitman* by enacting a state constitutional amendment, the presence or absence of

"state action" under the Fourteenth Amendment must be determined by a careful analysis of the relationship between the challenged conduct and the state's involvement, if any, with that conduct. In *Reitman,* the issue was the constitutionality of Proposition 14, an amendment to the California Constitution which operated to overturn existing fair housing legislation and to forbid the future enactment of such laws by the State or any subdivision of the State. By constructing a state constitutional roadblock to the achievement through normal political process of fair housing legislation by minority groups, the State acted in *Reitman* in violation of the Equal Protection Clause of the Fourteenth Amendment. In other words, in *Reitman,* the constitutional amendment *itself* had a discriminatory effect on the political process, and it was this effect that made that amendment constitutionally infirm.

The challenged conduct in *Adams,* on the other hand, is the repossession of Petitioners' motor vehicles, and this was accomplished privately by the creditors pursuant to written agreements signed by Petitioners. Sections 9-503 and 9-504, in contrast to Proposition 14 involved in *Reitman,* merely codify and restrict in favor of debtors a pre-code common law remedy which had its origins in the early laws of the Greeks, Romans, French and English. *See* McCall, *The Past as Prologue: A History of the Right to Repossess,* 47 So. Cal. L. Rev. 58 (1973). Sections 9-503 and 9-504 of the Uniform Commercial Code do not have an unconstitutional effect—they do not, for example, result in a taking of property. The fact that these Code sections permit the challenged private conduct does not render that conduct "state action" since most forms of purely

private behavior, including the making of contracts and wills, are permitted in some sense by state laws and a contrary ruling would emasculate the Fourteenth Amendment distinction between state and private behavior.

In reaching its decision in *Reitman*, this Court relied heavily upon the decision of the California Supreme Court in *Mulkey v. Reitman*, 64 Cal. 2d 529 (1966), and particularly upon the California Supreme Court's factual and legal evaluation of the state action and Equal Protection issues involved in the case. It is therefore significant that the California Supreme Court has recently held in a unanimous opinion that *Reitman* does not support the proposition that state action can be found in the fact that private conduct is authorized by legislative enactment. *Kruger v. Wells Fargo Bank*, 11 Cal. 3d 352, 361-362 (1974).

Second, the debtors have argued that Sections 9-503 and 9-504 of the Code, when read together with state laws and regulations concerning motor vehicle installment sales and the licensing of repossessors, create a "symbiotic relationship" between the State and the secured creditor so that the latter's conduct is state action under this Court's decision in *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961). This Court should grant certiorari in *Adams* and hold that *Burton* will not bear such a broad construction. Secured creditors are not located on land owned by public authorities and are not part of a continuing public enterprise, as were the defendants who were charged with racial discrimination in *Burton*. This Court expressly recognized in *Moose Lodge v. Irvis*, 407 U.S. 163 (1972), that a finding of state action could not be

based upon state licensing and pervasive regulation of private parties absent some direct and significant involvement by the State in the particular challenged conduct. This applies with particular force in a case such as *Adams* where the state laws and regulations relied upon by the debtors to supply the necessary state action are, for the most part, restrictive of creditor rights and were enacted primarily for the benefit of debtors. In such a case, the real complaint is that the State has not gone far enough in regulating creditor remedies, not that the restrictions imposed by the State on the exercise of those remedies are themselves objectionable. Clearly, such state inaction does not provide the state action necessary to bring the Due Process Clause of the Fourteenth Amendment into play.

Third, debtors have argued that a finding of state action can be predicated upon the theory that creditors in repossessing automobiles are performing a "public function" and must therefore be deemed state agents under this Court's decisions in *Marsh v. Alabama,* 326 U.S. 501 (1946), *Amalgamated Food Employees Local 590 v. Logan Valley Plaza, Inc.,* 391 U.S. 308 (1968), *Evans v. Newton,* 382 U.S. 296 (1966), and *Terry v. Adams,* 345 U.S. 461 (1953). Amici respectfully submit that such a broad "public function" theory of state action has never been endorsed by this Court and urge the Court to grant certiorari in *Adams* and so hold. The decisions of this Court relied upon by debtors in support of their "public function" theory involve unique factual situations, and their limited spheres of operation have been recognized by the subsequent decisions of this Court in *Lloyd Corp., Ltd. v. Tanner,* 407 U.S. 551 (1972), *Central Hardware Co.*

v. NLRB, 407 U.S. 539 (1972), and *Palmer v. Thompson*, 403 U.S. 217 (1971). Even assuming, however, that there is a broad "public function" theory of state action, an historical analysis of the repossession remedy demonstrates beyond doubt that repossession is not, and has never been, a function traditionally or historically performed by the State.

Fourth, debtors have argued that state action is present by reason of state laws permitting the registration of the transfer of title to a motor vehicle after its repossession and sale by the creditor. This argument must also be rejected upon a careful analysis of the relationship between motor vehicle registration laws and the challenged repossession. The registration takes place only *after* the repossession and sale have occurred, and its only purpose is to give evidentiary effect to what has been previously accomplished by purely private action. Possession and title to the motor vehicle pass independently of the registration process. The entire registration system is designed to protect innocent purchasers of motor vehicles, to protect the public by affording identification of vehicles and of responsible persons in case of accidents or violations of the law, to protect the registered owner after a transfer takes place, and to prevent the theft of motor vehicles. Registration systems must make some provision for involuntary transfers of title if they are to serve adequately the foregoing purposes. To predicate a finding of state action upon motor vehicle registration laws would render every private sale of a

motor vehicle and every private sale of a parcel of real property state action subject to Fourteenth Amendment review in the federal courts merely because of the State's willingness to record prior transfers of title in its public records.

Fifth, the debtors point to the ability of creditors to seek and obtain a deficiency judgment after a repossession if the proceeds from the sale of the collateral are insufficient to satisfy the outstanding indebtedness. They argue that, under *Shelley v. Kraemer*, 334 U.S. 1 (1948), such judicial action constitutes state action under the Due Process Clause. Amici submit, however, that the mere availability to the creditor of access to the judicial system in common with all others does not supply the state action necessary to launch a Fourteenth Amendment attack on his private and peaceful repossession and sale of collateral. A deficiency judgment is sought, if at all, only after the challenged repossession and sale have already occurred by purely private action. And, such a judgment can be obtained only upon bringing a civil suit, and after all of the Due Process requirements of notice and hearing have been provided to the debtor during the course of that proceeding.

* * *

The preceding sketch of arguments that have been made in *Adams* and other cases challenging the constitutionality of self-help repossession illustrate the importance of granting certiorari in *Adams* to clarify the meaning and scope of past state action decisions of this

Court, developed primarily under the Equal Protection Clause, as applied to a case involving the Due Process Clause.

IV.

A Decision by this Court in Adams Should Provide Substantial Guidance to other Courts in Cases Involving Challenges to other Forms of Self-Help Creditor Remedies.

Due process attacks upon self-help remedies have not been confined to self-help repossession. Other forms of self-help creditor remedies similar to self-help repossession have come under constitutional attack, including trust deed foreclosure pursuant to a private power of sale clause in a deed of trust as permitted and restricted by state statutory law; set-off of mutual indebtedness as permitted by state statutory and/or judicial law; and private enforcement of a wage assignment agreement as permitted and restricted by state statutory law. A list of the cases known to Amici where the constitutionality of these remedies has been challenged is set forth in Appendix "B" to this Brief. Amici respectfully submit that a ruling by this Court in *Adams* would have an important if not decisive impact upon most of these cases because of the similarity of the state action and other issues they raise.

V.

The Adams Case Raises Substantially Different Issues From the Jackson Case and Although Briefs and Argument in Adams May Be Helpful to the Court in Deciding Jackson these Cases Should Not Be Consolidated.

The state action issues raised in *Jackson v. Metropolitan Edison Company,* now pending before this

Court (No. 73-5845), are substantially different from the issues raised in *Adams*. In *Jackson*, this Court will decide whether a public utility's termination of electrical service for nonpayment of a bill is state action under the Due Process Clause. To establish state action in *Jackson*, Petitioner places principal reliance upon the following factual allegations:

> (1) Public utilities are chartered and issued certificates of convenience to serve the public interest rather than the private interests of their incorporators;
>
> (2) Public utilities hold exclusive state franchises within their service areas and because of this state granted monopoly are not subject to competition and the private controls of the market economy;
>
> (3) Public utilities are guaranteed a fair rate of return by the State's regulatory rate structure; and
>
> (4) Public utilities perform an essentially "public" service by dispensing a product which is absolutely essential to the health and well-being of a community which has no alternative source for the purchase of that product.

None of these facts are present in *Adams*. Furthermore, in *Adams*, the creditors acted pursuant to express contractual authority contained in the controlling security agreements, a fact not present in *Jackson*.

Amici believe that the decision of the Court of Appeals in *Jackson* is correct and should be affirmed. Amici also believe that the briefs filed in *Adams* may be helpful to this Court in its resolution of *Jackson*. At the same time, however, Amici respectfully submit

that the state action issues raised in *Jackson* are sufficiently different from those raised here that certiorari should be granted in *Adams,* and *Adams* should not be consolidated with *Jackson* for purposes of oral argument or decision.

VI.

Conclusion.

For the reasons set forth above, Amici respectfully submit that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should be granted and the decision of the Court of Appeals should be affirmed.

Dated: July 5, 1974.

Respectfully submitted,

GEORGE R. RICHTER, JR.,
Counsel for Amici Curiae Ford Motor Credit Company, General Motors Acceptance Corporation and Chrysler Credit Corporation.

Of Counsel:
SHEPPARD, MULLIN, RICHTER & HAMPTON,

APPENDIX "A".

Constitutional Attacks Upon Self-Help Repossessions.

1. *Adams v. Southern California First Nat'l Bank*, 492 F.2d 324 (9th Cir. 1973).

2. *Aguilar v. United California Bank*, Civ. No. 55321 (Cal. Super. Ct.).

3. *Akins v. Ford Motor Credit Company*, Civ. No. 74LM8 (Ill. Cir. Ct.).

4. *Anderson v. General Motors Acceptance Corporation*, Civ. No. C86134 (Cal. Super. Ct.).

5. *Arban v. General Motors Acceptance Corporation*, Civ. No. 72 216-694CZ (Mich. Cir. Ct.).

6. *Bailey v. Ford Motor Credit Company*, Civ. No. 762206 (Wash. Super. Ct.).

7. *Baker v. Keeble*, Civ. No. 998-E (M.D. Ala.).

8. *Ball v. Ford Motor Credit Company*, Civ. No. 73L8616 (Ill. Cir. Ct.).

9. *Bank of America v. Bright*, Civ. No. 45276 (Cal. Super. Ct.).

10. *Barnes v. General Motors Acceptance Corporation*, Civ. No. 72-C1-729 (Ohio Ct. Com. Pleas).

11. *Bell v. General Motors Acceptance Corporation*, Civ. No. 73CV537-W-3 (W.D. Mo.).

12. *Bennett v. Hutchinson's Quality Auto Sales, Inc.*, Civ. No. 72-865 (M.D. Fla.).

13. *Black v. General Motors Acceptance Corporation*, Civ. No. 74-99 (D.S.C.).

14. *Bogan v. Ford Motor Credit Company*, Civ. No. 904691 (Tex. Dist. Ct.).

15. *Boland v. Essex County Bank and Trust Company*, Civ. No. 72-3299-G (D. Mass.).

16. *Brantley v. Union Bank and Trust Company,* 362 F. Supp. 355 (M.D. Ala. 1973).

17. *Brown v. United States Nat'l Bank,* 96 Ore. Adv. 1667, 509 P.2d 442 (1973).

18. *Brunell v. Security Pacific Nat'l Bank,* Civ. No. 54763 (Cal. Super. Ct.).

19. *Bryant v. United California Bank,* Civ. No. 10685 (Cal. Super. Ct.).

20. *Bueno v. General Motors Acceptance Corporation,* Civ. No. 10270 (Utah Dist. Ct.).

21. *Bullshows v. Ford Motor Credit Company,* Civ. No. 7698 (Montana Dist. Ct.).

22. *Callan v. Security Pacific Nat'l Bank,* Civ. No. 20973 (Cal. Super. Ct.).

23. *Calloway v. Ford Motor Credit Company,* Civ. No. 937,619 (Cal. Mun. Ct.).

24. *Chatman v. General Motors Acceptance Corporation,* Civ. No. C-24512 (Mich. Dist. Ct.).

25. *Chrysler Credit Corp. v. Dinitz,* 11 UCC Rep. 627 (N.Y. Cir. Ct.).

26. *Cole v. Ford Motor Credit Company,* Civ. No. 7326B (Tex. Dist. Ct.).

27. *Colvin v. Avco Fin'l Servs., Inc.,* 12 UCC Rep. 25 (D. Utah 1973).

28. *Combs v. Ford Motor Credit Company,* Civ. No. 7361-9353 (Tex. Dist. Ct.).

29. *Cook v. Lilly,* App. No. 13413 (W. Va. Sup. Ct.).

30. *Coomes v. Chrysler Credit Corp.,* Civ. No. 15672 (D. Conn.).

31. *Couch v. Ford Motor Credit Company,* Civ. No. 73-1892-CA(L)01 (Fla. Cir. Ct.).

32. *Davidson Chevrolet, Inc. v. Cook*, Civ. No. 72 CVD 2901 (N.C. Jus. Ct.).

33. *Davis v. Kenneth Chevrolet*, Civ. No. 998,821 (Cal. Super. Ct.).

34. *Devilliers v. Chrysler Credit Corp.*, Civ. No. 73-875-E (W. D. Okla.).

35. *Draper v. Ford Motor Credit Company*, Civ. No. 420351 (Cal. Super. Ct.).

36. *Dublin v. Redstone Federal Credit Union*, Civ. No. 72-2726-RJK (C.D. Cal.).

37. *Ferm v. Ford Motor Credit Company*, Civ. No. NWC-27326 (Cal. Super. Ct.).

38. *Flores v. Commercial Credit*, Civ. No. C35107 (Cal. Super. Ct.).

39. *Ford Motor Credit Company v. Wollenberg*, Civ. No. 769411 (Mo. Cir. Ct.).

40. *Franchino v. Ford Motor Credit Company*, Civ. No. B34546 (Ohio Mun. Ct.).

41. *Frost v. Mohawk Nat'l Bank*, 347 N.Y.S.2d 246 (N.Y. Sup. Ct. 1973).

42. *Gary v. Darnell*, Civ. No. 7752-B (W.D. Ky.).

43. *General Motors Acceptance Corporation v. Ikner*, Civ. No. 86632-1972 (N.Y. Civ. Ct.).

44. *General Motors Acceptance Corporation v. Jones*, Civ. No. M273 656 (Ind. Mun. Ct.).

45. *General Motors Acceptance Corporation v. Smith*, Civ. No. 1833 (Miss. Dist. Ct.).

46. *General Motors Acceptance Corporation v. Waters*, Civ. No. F-71795 (Tenn. Gen. Sess. Ct.).

47. *Gibbs v. Titelman*, 13 UCC Rep. 401 (E.D. Pa. 1973).

48. *Giglio v. Bank of Delaware*, 307 A.2d 816 (Del. Ch. Ct. 1973).

49. *Goodman v. General Motors Acceptance Corporation*, Civ. No. 74CV41-W-4 (W.D. Mo.).

50. *Goret v. Ford Motor Credit Company*, Civ. No. 16-430 (N.M. Dist. Ct.).

51. *Grant v. General Motors Acceptance Corporation*, Civ. No. 962,733 (Tex. Dist. Ct.).

52. *Greene v. First Nat'l Exch. Bank*, 348 F. Supp. 672 (W.D. Va. 1972).

53. *Gross v. Ford Motor Credit Company*, Civ. No. 5173-427 (Ind. Super. Ct.).

54. *Harness v. Ford Motor Credit Company*, Civ. No. C38026 (Cal. Super. Ct.).

55. *Heinicke v. Ford Motor Credit Company*, Civ. No. 774403 (Wash. Super. Ct.).

56. *Helfinstine v. Ford Motor Credit Company*, Civ. No. C-73-805 (Okla. Dist. Ct.).

57. *Hill v. General Motors Acceptance Corporation*, Civ. No. 58958TD (Tenn. Cir. Ct.).

58. *Hill v. Michigan Nat'l Bank*, Civ. No. 5306 (Mich. Ct. App.).

59. *Hinton-Cox Pontiac, Inc. v. Parsons*, Civ. No. 8843 (Ark. Sup. Ct.).

60. *Huber v. Union Planters Nat'l Bank*, Civ. No. C-72-264 (W.D. Tenn.).

61. *Huggins v. General Motors Acceptance Corporation*, Civ. No. 959,221 (Tex. Dist. Ct.).

62. *Hunter v. General Motors Acceptance Corporation*, Civ. No. 177,580 (Ky. Cir. Ct.).

63. *Ingram v. Ford Motor Credit Company*, Civ. No. 73064C (S.D. Miss.).

64. *James v. Pinnix*, App. No. 73-1866 (5th Cir. June 10, 1974).

65. *Johnson v. Associates Finance, Inc.*, 365 F. Supp. 1380 (S.D. Ill. 1973).

66. *Johnson v. Ford Motor Credit Company*, Civ. No. 481460 (Ga. Civ. Ct.).

67. *Kabase v. General Motors Acceptance Corporation*, Civ. No. CA-73L1168 (N.D. Ala.).

68. *Kelley v. Bank of America National Trust & Savings Association*, Civ. No. 55288 (Cal. Super. Ct.).

69. *Kelley v. Kent's Used Cars*, Civ. No. 326,933 (Cal. Super. Ct.).

70. *Kinch v. Chrysler Credit Corporation*, 4 CCH Sec. Tr. Guide ¶52,248 (E.D. Tenn. 1973).

71. *King v. General Motors Acceptance Corporation*, Civ. No. 8613 (Ark. Cir. Ct.).

72. *King v. South Jersey Nat'l Bank*, Civ. No. C-1609-71 (N.J. Super. Ct.).

73. *Kipp v. Cozens*, 11 UCC Rep. 1067 (Cal. Super. Ct.).

74. *Kirksey v. Theilig*, 351 F. Supp. 727 (D. Colo. 1972).

75. *Ladd v. Ford Motor Credit Company*, Civ. No. 27987 (Cal. Mun. Ct.).

76. *Langston v. Ford Motor Credit Company*, Civ. No. K7072CA8 (W.D. Mich.).

77. *Leiger v. General Motors Acceptance Corporation*, Civ. No. 6540 (Va. Cir. Ct.).

78. *Lyon v. Wells Fargo Bank*, Civ. No. EAC 14269 (Cal. Super. Ct.).

79. *Marable v. General Motors Acceptance Corporation,* Civ. No. 153-24030-74 (Tex. Dist. Ct.).

80. *Marshall v. Stephens Buick Company,* Civ. No. 690598 (Minn. Dist. Ct.).

81. *Mayhugh v. Bill Allen Chevrolet Co.,* App. No. 73-1450 (8th Cir. April 25, 1974).

82. *Mayhugh v. Bill Allen Chevrolet,* Civ. No. 780,610 (Mo. Cir. Ct.).

83. *McCormick v. First Nat'l Bank,* 322 F. Supp. 604 (S.D. Fla. 1971).

84. *McDuffy v. Worthmore Furniture Co.,* Civ. No. 73-426-R (E.D. Va.).

85. *Meighan v. General Motors Acceptance Corporation,* Civ. No. 56601 (N.Y. Civ. Ct.).

86. *Messenger v. Sandy Motors, Inc.,* 4 CCH Sec. Tr. Guide ¶51,952 (N.J. Super. Ct. 1972).

87. *Michel v. Rex-Noreco, Inc.,* 12 UCC Rep. Serv. 543 (D. Vt. 1972).

88. *Miller v. Wohlforth,* Civ. No. 72-3001 (Alaska Super. Ct.).

89. *Mojica v. Automatic Employees Credit Union,* 363 F. Supp. 143 (N.D. Ill. 1973), *appeal filed sub-nom. and determination of jurisdiction deferred to hearing of the case on the merits,* 42 U.S.L.W. 3484 (U.S., Feb. 25, 1974) (No. 73-858).

90. *Molina v. Bank of Hawaii,* Civ. No. 73-3936 (D. Hawaii).

91. *MSR Enterprises, Inc. v. General Motors Acceptance Corporation,* Civ. No. 73-CVS-2203 (N.C. Gen. Jus. Ct.).

92. *Murphy v. General Motors Acceptance Corporation,* Civ. No. 2753 (Ky. Cir. Ct.).

93. *Neal v. Bob Eddy Buick Company*, Civ. No. 73-0843 (Ohio Ct. Com. Pleas).

94. *Nolen v. General Motors Acceptance Corporation*, Civ. No. 750,221 (Mo. Cir. Ct)

95. *Nichols v. Tower Grove Bank*, App. No. 73-1621 (8th Cir., May 13, 1974).

96. *Nicholson v. General Motors Acceptance Corporation*, Civ. No. 72-H-1558 (S.D. Tex.).

97. *Northside Motors of Florida, Inc. v. Brinkley*, 282 So.2d 617 (Fla. 1973).

98. *Nowlin v. Prof. Auto Sales, Inc.*, Civ. No. 73-1348 (8th Cir., April 25, 1974).

99. *Oberer v. Ford Motor Credit Company*, Civ. No. 73-CI11730 (Tex. Dist. Ct.).

100. *Oliver v. Mossy Oldsmobile, Inc.*, Civ. No. 923,623 (Tex. Dist. Ct.).

101. *Oller v. Bank of America*, 342 F. Supp. 21 (N.D. Cal. 1972).

102. *Pease v. Havelock Nat'l Bank*, 351 F. Supp. 118 (D. Neb. 1972).

103. *Peguese v. Ford Motor Credit Company*, Civ. No. 73-771 (S.C. Civ. Ct.).

104. *Pemberton v. Potamkin Cadillac Leasing Corporation*, Civ. No. 1945-74 (N.Y. Sup. Ct.).

105. *Plante v. Ind. Nat'l Bank*, 12 UCC Rep. 739 (R.I. Super. Ct. 1973).

106. *Porras v. Ford Motor Credit Company*, Civ. No. 72-C-65 (S.D. Tex.).

107. *Preciado v. Budget Fin. Plan, Inc.*, Civ. No. SM 8675 (Cal. Super. Ct.).

108. *Price v. Ford Motor Credit Company*, Civ. No. B-83842 (Ga. Super. Ct.).

109. *Qualls v. Ford Motor Credit Corp.*, Civ. No. 6880 (E.D. Tenn.).

110. *Rivers v. General Motors Acceptance Corporation*, Civ. No. 73 CV-03-1004 (Ohio Ct. Com. Pleas).

111. *Roussin v. General Motors Acceptance Corporation*, Civ. No. CT-73-625 (Mich. Dist. Ct.).

112. *Russell v. American Fletcher Financial Corporation*, Civ. No. 1P 73-C-561 (S.D. Ind.).

113. *Russell v. Ford Motor Credit Company*, Civ. No. 760312 (Wash. Super. Ct.).

114. *Sanders v. Crocker-Citizens Nat'l Bank*, Civ. No. 258,755 (Cal. Super. Ct.).

115. *Sanderson v. Chrysler Credit Corporation*, Civ. No. 7517-73-H (S.D. Ala.).

116. *Shelton v. General Electric Credit Corporation*, 350 F. Supp. 1079 (M.D. Ga. 1973).

117. *Shirley v. State Nat'l Bank*, 493 F.2d 739 (2d Cir. 1974).

118. *Span v. Ford Motor Credit Company*, Civ. No. CD-72-A-7637 (Ind. City Ct.).

119. *Spring v. Dick Balch Chevrolet*, Civ. No. 773887 (Wash. Super. Ct.).

120. *Stegell v. Ford Motor Credit Company*, Civ. No. C-74-307 (Okla. Dist. Ct.).

121. *Stevenson v. State Fin. Adjustors*, Civ. No. 39027 (Cal. Super. Ct.).

122. *Stokes v. Ford Motor Credit Company*, Civ. No 73M1-134148 (Ill. Cir. Ct.).

123. *Thomas v. Ford Motor Credit Company*, Civ. No. C-51184 (Cal. Super. Ct.).

124. *Thrower v. Ford Motor Credit Company*, Civ. No. LR74C-21 (E.D. Ark.).

125. *Thurman v. Ford Motor Credit Company*, Civ. No. 41164 (Ga. Super. Ct.).

126. *Turner v. Impala Motors*, Civ. No. C-73-50 (W.D. Tenn.).

127. *Underwood v. Ford Motor Credit Company*, Civ. No. 74-81 (Ark. Cir. Ct.).

128. *Universal C.I.T. Credit Corp. v. Keller Enterprises*, Civ. No. 146,371 (Cal. Super. Ct.).

129. *Walker v. Wells Fargo Bank, N.A.*, Civ. No. EAC 15244 (Cal. Super. Ct.).

130. *Wells Fargo Bank v. Rubin*, Civ. No. 949,-635 (Cal. Super. Ct.).

131. *Widmer v. General Motors Acceptance Corporation*, Civ. No. 15246-1972 (N.Y. Sup. Ct.).

132. *Williams v. Ford Motor Credit Company*, Civ. No. 7777-73-P (S.D. Ala.).

133. *Williams v. Motorist Insurance Corporation*, Civ. No. 73 CI 570 (Ohio Ct. Com. Pleas).

134. *Wilson v. Ford Motor Credit Company*, Civ. No. 54775 (Cal. Super. Ct.).

135. *Windsor v. General Motors Acceptance Corporation*, Civ. No. 25815 (Ala. Cir. Ct.).

136. *Yankwitt v. Franklin Nat'l Bank*, 12 UCC Rep. 1254 (N.Y. Dist. Ct.).

APPENDIX "B."

Constitutional Attacks Upon Other Self-Help Creditor Remedies.

Trust Deed Foreclosure

1. *Young v. Ridley*, 309 F. Supp. 1308 (D.D.C. 1970).

2. *Logan v. Short*, 342 F. Supp. 1349 (E.D. Mo. 1972).

3. *Hoffman v. United States Department of Housing & Urban Development*, Civ. No. CA-7-878 (N.D. Tex., Feb. 6, 1974).

4. *Law v. United States Department of Agriculture*, Civ. No. 1486 (N.D. Ga., Jan. 28, 1974).

5. *Northrip v. Federal National Mortgage Association*, Civ. No. 40074 (E.D. Mich., Feb. 28, 1974).

6. *Global Industries, Inc. v. Harris*, Civ. No. .... (N.D. Ga., May 22, 1974) *summarized at* 42 U.S.L.W. 2632.

7. *Strutt v. Ontario Sav. & Loan Ass'n*, 11 Cal. App. 3d 547, 90 Cal. Rptr. 60 (1970).

8. *Ruff v. Lee*, 230 Ga. 426, 197 S.E.2d 376 (1973).

9. *Giordano v. Stubbs*, 228 Ga. 75, 184 S.E.2d 165 (1971), *cert. denied*, 405 U.S. 908 (1972).

10. *Great Falls Nat'l Bank v. McCormick*, 152 Mont. 319, 448 P.2d 991 (1968).

11. *Federal Nat'l Mortgage Ass'n v. McMillan*, Civil No. 12624 (App. Dep't. Los Angeles, Jan. 6, 1971), *cert. denied*, 402 U.S. 936 (1971).

12. *MCA, Inc. v. Universal Diversified Enterprises Corp.*, 27 Cal. App. 3d 170, 103 Cal. Rptr. 522 (1972).

Setoff of Mutual Indebtedness

1. *Bichel Optical Laboratories v. Marquette National Bank*, 487 F.2d 906 (8th Cir. 1973).

2. *Fletcher v. Rhode Island Hospital Trust National Bank*, App. No. 73-1372 (1st Cir., May 9, 1974).

3. *Jojola v. Wells Fargo Bank*, Civ. No. C-71-900 SAW (N.D. Cal., May 8, 1973).

4. *Russell v. American Fletcher Financial Corporation*, Civ. No. IP 73-C-501 (S.D. Ind., April 29, 1974).

5. *Lagulla v. Security Pacific National Bank*, Civ. No. 73-184-FW (C.D. Cal.)

6. *Wagner v. Bankers National Life Insurance Company*. Civ. No. 73-2449 WPD (C.D. Cal.)

7. *Kruger v. Wells Fargo Bank*, 11 Cal. 3d 352 (1974).

8. *Bates v. Bank of America*, Civ. No. 640-885 (San Francisco Super. Ct.).

9. *Bookman v. Wells Fargo Bank*, Civ. No. 641-015 (San Francisco Super. Ct.).

10. *Sweeting v. Bank of America*, Civ. No. 251-351 (Santa Clara Super. Ct.).

11. *Allied Sheet Metal Fabricators, Inc. v. Peoples National Bank*, 14 U.C.C. Rep. 432 (Wash. Ct. App. 1974).

12. *Gerald v. Security Pacific National Bank*, Civ. No. 42346 (Los Angeles Super. Ct.).

13. *Pusharic v. Security Pacific National Bank*, Civ. No. CA 000058 (Los Angeles Super. Ct.)

Wage Assignments

1. *Bond v. Dentzer*, 494 F.2d 302 (2d Cir. 1974) *petition for cert. filed*, 42 U.S.L.W. 3693 (U.S., June 10, 1974) (No. 73-1848).

2. *Western v. Hodgson*, 359 F. Supp. 194 (S.D. W.Va. 1973).

3. *Exton v. Michigan Fidelity Loan*, Civ. No. G 36-72 (W.D. Mich. 1972).